IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1404 of 2007

Mariammal .. Petitioner

Vs

1.The Govt. of Tamil Nadu,
rep. by its Secretary
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai.

2.The Commissioner of Police,
Detaining Authority, Coimbatore City. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.C.D.Sugumar
For Respondents : Mr.N.R.Elango,
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, wife of the detenu by name Bathran @ Suresh, has filed this Habeas Corpus Petition challenging the detention order dated 11.6.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), branding the detenu as a 'Goonda', to call for the records in connection with the order of detention passed in C.No.51/G/IS/2007, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

2. On the basis of the complaint lodged by one S.Gandhi, the ground case which led to the passing of the detention order came to

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be registered in Crime No.491 of 2007 on the file of B-2 R.S.Puram Police Station for offences under Sections 397 and 506(ii). According to the complainant, on 24.5.2007, when he was proceeding in his moped, the detenu appeared before him and snatched Rs.300/- from his shirt pocket and at the point of knife, threatened him to leave that place otherwise he would kill him. On seeing this atrocious activity, the public ran helter shelter, creating terror and panic situation and by brandishing the knife, the detenu escaped from the spot. On the complaint, the case referred to above was registered and the detenu was arrested during the course of investigation and produced before Judicial Magistrate No.I, Coimbatore, who remanded him to judicial custody.

3.The second respondent, taking note of the above ground case and finding that there are three adverse cases on the file of B-8 Variety Hall Road police station, B-2 R.S.Puram Police Station and Thudiyalur Police Station, Coimbatore District, in Crime Nos.728/2005, 1064/2005 and 129/2006 respectively for offences under Sections 457 and 380 IPC. and having satisfied himself that there is compelling necessity to detain the detenu in order to prevent him from indulging in such activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a 'Goonda'.

4.Since the learned counsel for the petitioner assailed the order of detention mainly on the ground of delay on the part of the detaining authority in sending the remarks to the Government while considering the representation of the detenu, we do not propose to go into other aspects, as the said ground has to succeed.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2.Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

5.3.The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4.Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention

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illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5.It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6.1.Coming to the case on hand, admittedly, objecting to the order of detention, a representation was made on behalf of the detenu on 23.9.2007, which was received by the Government on 25.6.2007. Remarks were called for from the detaining authority on 26.6.2007, who, in turn, called for parawar remarks from the sponsoring authority on 2.7.2007. Though the detaining authority received the same on 5.7.2007, it was sent to the Government only on 10.7.2007, i.e. after a delay of five days. Even excluding the intervening holidays, viz. 7.7.2007 and 8.7.2007 (being Saturday and Sunday), there is delay of three days in sending the remarks, which remained explained and hence, inexcusable. Thereafter, on receipt of the remarks on 11.7.2007, the file was submitted on 12.7.2007, on which date, it was considered by the Under Secretary and the Additional Secretary. The Minister concerned dealt with the file on 13.7.2007 and rejected the same. The rejection letter was prepared on 16.7.2007 and it was sent to the detenu on 19.7.2007 and served on him on 21.7.2007.

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7.At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:-

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8.That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9.In the instant case, there is unexplained delay on the part of the detaining authority in sending the remarks to the Government, which rendered the detention illegal. Hence, we are inclined to allow this petition.

10.In the result, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
   of Tamil Nadu, Prohibition and
   Excise Department, Fort St. George,
   Chennai 600 009.

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2.The The Commissioner of Police,
Coimbatore City.

3. The Superintendent
Central Prison, Coimbatore.

4. The Public Prosecutor,
High Court, Madras.

5.The Joint Secretary to Govt,
Public Law and order Department,
Fort St George, Chennai-9.

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